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Follow-up to the recommendations of the Permanent Forum

Compilation of information from national human rights institutions

Note by the Secretariat

Summary

The present report is a compilation of the responses from national human rights institutions to a questionnaire prepared by the secretariat of the Permanent Forum on Indigenous Issues, in consultation with the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, on actions taken or planned in relation to indigenous peoples, in order to identify and share good practices. The questionnaire and the complete responses from the institutions are available on the website of the Permanent Forum (www.un.org/development/desa/indigenouspeoples).

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I. Introduction

1. This is the first time that the Permanent Forum has requested information on the work of national human rights institutions.[1] The Permanent Forum is keen to engage national human rights institutions in its work and invites them to participate in its sessions. It acknowledges and thanks those institutions that have provided reports and urges them to continue to provide information on their activities relating to indigenous peoples.

2. The secretariat of the Permanent Forum received written responses to the questionnaire addressed to national human rights institutions on actions taken or planned in relation to indigenous peoples. Replies to the questionnaire were received from institutions in Argentina, Burundi, Colombia, Denmark and the United Republic of Tanzania. Other institutions, such as those in Afghanistan, Austria, Croatia, Greece, Haiti, Luxembourg, the Netherlands, the Republic of Korea and the United Kingdom of Great Britain and Northern Ireland, advised that they did not work on indigenous peoples' issues.

3. The questionnaire sent to national human rights institutions contained four questions, on the implementation of a recommendation issued by the Permanent Forum at its fourteenth session, in 2015; the theme of the current session, "Indigenous peoples: conflict, peace and resolution"; the participation of national human rights institutions in the sessions of the Forum; and the activities of national human rights institutions in the implementation of the outcome document of the World Conference on Indigenous Peoples.

II. Responses of national human rights institutions

1. In the report on its fourteenth session, in 2015 (E/2015/43-E/C.19/2015/10), the Permanent Forum on Indigenous Issues made the following recommendation: Consistent with article 10 of the United Nations Declaration on the Rights of Indigenous Peoples, the Permanent Forum calls upon Member States and human rights institutions to consider examining, in conjunction with the Special Rapporteur on the rights of indigenous peoples and other mandate holders, the forced relocation of indigenous communities. Please provide any information on how your human rights institution is examining or working on issues related to the forced relocation of indigenous peoples.

4. The national human rights institution of Argentina has not received any complaints of forced relocation of indigenous peoples. However, it has received complaints related to judicial evictions as they refer to judicial orders, which is outside its competence. In such cases the institution accompanies indigenous peoples in their requests for juridical services to suspend the evictions. The institution also works on issues surrounding some of the rights that are affected in the context of an eviction, such as the right to health, education, housing and food. The institution is also participating in a dialogue mechanism with other national and provincial institutions, as well as with civil society organizations, regarding claims

[1] The questionnaire was addressed to 70 national human rights institutions. For more details on national human rights institutions, see the website of the International Coordinating Committee on National Human Rights Institutions (http://nhri.ohchr.org/EN/Pages/default.aspx).

of the Ava Guarani indigenous peoples evicted from their territory some 20 years ago.

5. The national human rights institution of Burundi states that, after an interview with the Burundi association Unite for the Promotion of the Batwa, it became apparent that the Batwa peoples were unjustly accused of offences of rape and theft, among others, with the sole purpose of evicting them from their lands, which they acquired following the abolition of the serfdom system by Decree Law No. 1/19 of 30 June 1977. In addition, some of the Batwa peoples had to sell their lands to creditors at low prices in order to pay their debts, which exacerbated their marginalization and poverty. According to the association, the Batwa peoples are discriminated against regarding compensation for their lands that have been expropriated for public service. The national human rights institution has not conducted investigations into these allegations. However, there are reports by the International Labour Organization (ILO) and the non-governmental organization Agency for Cooperation and Research in Development documenting this. The institution is considering granting legal assistance to members of the Batwa peoples, given the marginalization that the group has suffered historically.

6. The national human rights institution of Colombia, through the office in charge of displaced people and the office on indigenous peoples and minorities, follows up resolutions 004 and 005 of 2009 of the Constitutional Court of Colombia, by which the Court ordered special protection for ethnic groups and, in particular, indigenous peoples forced to leave their collective territories. In such cases, the institution accompanies indigenous peoples in the field and requests authorities to adopt measures necessary to guarantee their fundamental territorial rights. Law No. 4633 of 2011 is the main instrument for attention and collective compensation measures for indigenous peoples in the framework of transitional justice. In such matters, the national human rights institution of Colombia has followed up cases of restitution of lands in Alto Andagueda, where the Embera Chami indigenous community is located in the Department of Choco, in order to avoid territorial disputes.

7. The Danish Institute for Human Rights, which is the national human rights institution of Denmark and Greenland, has not examined issues on forced relocation of indigenous peoples in Greenland. However, it made reference to a case decided by the Danish Supreme Court in 2003, initiated by the Greenlandic Thule tribe, as well as to a 2006 ruling of the European Court of Human Rights related to the expropriation and forced relocation of that tribe.

8. The national human rights institution of the United Republic of Tanzania works on issues related to forced relocation of indigenous peoples by conducting public investigations on forceful evictions of the pastoralists' communities and makes recommendations to the authorities. It also investigates complaints of human rights violations and issues related to the contravention of administrative justice affecting indigenous communities. It also monitors the observance of human rights standards and principles of good governance during eviction processes and advises the Government on obtaining the free, prior and informed consent of indigenous peoples when relocation takes place.

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2. The theme of the fifteenth session of the Permanent Forum, in 2016, is "Indigenous peoples: conflict, peace and resolution". Please provide information on how your human rights institution is working on issues related to conflict, peace and resolution for indigenous peoples. Where possible, please include information on the situation of indigenous women in your responses.

9. The national human rights institution of Argentina is working actively on issues related to participation, consultation and free, prior and informed consent of indigenous peoples, which are seen as constituting the basic framework to avoid conflict. In order to work on these issues, a working group has been established with civil society organizations and other public mechanisms, including indigenous peoples' organizations.

10. The national human rights institution of Argentina has received many complaints about the lack of compliance with the right of consultation and free, prior and informed consent in many provinces. The complaints relate to the authorization of development projects for the exploitation of hydrocarbons and other natural resources. The institution makes reference to a successful consultation process with indigenous peoples in a project related to optic fibre in Humahuaca, where three indigenous communities participated with national institutions, regional mechanisms and private enterprises. Judicial proceedings were thus avoided. The national human rights institution of Argentina has also intervened in cases against indigenous peoples related to the criminalization of social protest.

11. According to the national human rights institution of Burundi, the Arusha Peace Agreement aims to peacefully resolve the political and ethnic conflict that has continued in Burundi for decades. These conflicts have come about owing to discrimination and other historical grievances. The Agreement prescribes respect for ethnic balance in different institutions, including decision-making institutions. Under article 164 of the Constitution of the Republic of Burundi of 18 March 2005 and article 108 (b) of the Electoral Code, the National Assembly must include at least three Batwa representatives, who should be appointed if not elected; the same applies for the Senate.

12. The Danish Institute for Human Rights has not been directly involved in any work specifically related to conflict, peace and resolution for indigenous peoples. In 2014, Naalakkersuisut, the Government of Greenland, established the Reconciliation Commission. From 2015 to 2017 the Commission is initiating activities to identify cultural and social challenges in society that give rise to tensions as a result of the colonial heritage. The Human Rights Council of Greenland was not invited to participate in or appoint a member of the Commission.

13. Concerning the situation of women, gender discrimination is prohibited by the Greenland Act on Equality of Men and Women. It was through this Act that the Council of Gender Equality was established in Greenland. Its mandate includes examining, on its own initiative or by request, measures relating to gender equality. In cases of discrimination, no national complaints procedure for individuals exists other than taking a case to court or referring the case to the Parliamentary Ombudsman.

14. The role of the national human rights institution of the United Republic of Tanzania in relation to conflict, peace and resolution for indigenous peoples includes awareness-raising on respecting human rights and observance of the

principles of good governance as a means of peace restoration and conflict prevention. This process also includes making indigenous communities aware of the importance of observing and respecting government policies, laws and regulations and of adhering to development programmes. It also includes collaboration with civil society organizations and other key stakeholders in conducting conflict resolution meetings and sessions, for example resolving land disputes between pastoralists and farmers.

3. Has your human rights institution participated in any sessions of the Permanent Forum on Indigenous Issues? If so, what year(s)? Are you considering doing so in the future?

15. The national human rights institution of Argentina has not participated in the sessions of the Forum but is considering doing so in future sessions, especially since it has created a working group for indigenous peoples' rights.

16. The national human rights institution of Burundi has not participated in any session of the Permanent Forum but is interested in participating in the future.

17. The Danish Institute for Human Rights has not participated in any meetings of the Permanent Forum. However, among the members of the Human Rights Council of Greenland is the Inuit Circumpolar Council Greenland, which participates in meetings and events and networks globally on indigenous issues, including the sessions of the Permanent Forum.

18. The national human rights institution of the United Republic of Tanzania has not participated in any sessions of the Permanent Forum but is considering participating in future sessions, subject to the availability of resources or support from development partners.

4. On 22 and 23 September 2014, the United Nations convened the World Conference on Indigenous Peoples. In the outcome document (resolution 69/2), the General Assembly welcomed the increasingly important role of national and regional human rights institutions in contributing to the achievement of the ends of the United Nations Declaration on the Rights of Indigenous Peoples (para. 30). Please provide any information on:

(a) Activities carried out by your human rights institution making use of its mandate and functions under the Paris Principles to promote and protect indigenous peoples' rights as affirmed in the United Nations Declaration on the Rights of Indigenous Peoples

19. The national human rights institution of Argentina reported the following activities related to the promotion of indigenous peoples' rights:

(a) Seminar on indigenous peoples' rights for indigenous leaders together with the Office of the United Nations High Commissioner for Human Rights in Chaco, Tucuman, Jujuy and Misiones;

(b) Seminars on indigenous peoples' rights for government and judicial officers organized with the Association of Lawyers on Indigenous Law and the National University of Salta;

(c) Establishment of a working group on indigenous peoples' participation, consultation and free, prior and informed consent;

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(d) Publication on the rights of indigenous peoples in Argentina for indigenous peoples and communities, among others.

20. The national human rights institution of Argentina is also following up complaints presented by indigenous peoples. Some of the most recurrent complaints include issues related to access to justice, economic, social and cultural rights, territories, participation and consultation.

21. The national human rights institution of Burundi contributed to the preparation and celebration of the International Day of the World's Indigenous Peoples organized in Bubanza Province in 2015. The representative of the institution has stressed the need to establish mandatory education for Batwa children and the involvement of Batwa families in sending their children to schools. He has also called for affirmative action in favour of Batwa candidates applying for jobs. In 2014 the institution organized a meeting with Unite for the Promotion of the Batwa with a view to promoting the rights of the Batwa peoples. The institution has also recruited Batwa and Mutwa persons as part of its staff.

22. The office on indigenous peoples within the national human rights institution in Colombia provides training to indigenous peoples according to the framework established in the National Constitution, as well as in the law on victims of the armed conflict. About 161 workshops have been organized with the participation of some 10,000 indigenous persons in 15 departments, especially in those with a large presence of indigenous peoples. The office also follows up the adoption of public policies related to indigenous peoples. In the framework of the dialogue mechanism "Mesa permanente de concertación", the office accompanied consultation processes for the formulation of budgetary guidelines incorporated in the national development programme. The office on indigenous peoples has influenced the formulation of differential instruments in the evaluation of risks and threats faced by indigenous leaders and their traditional authorities, in order for the Government to establish protective measures according to the specific population.

23. The Danish Institute for Human Rights works in close collaboration with the Human Rights Council of Greenland in order to promote and protect human rights in Greenland. The Council shares valuable knowledge of the conditions in Greenland with the Institute, and the Institute assists the Council with knowledge-sharing and training on various human rights issues. Whereas the Institute on its own accord has no specific activities under way concerning indigenous peoples' issues, the Council has set up a working group on equal treatment, culture and language. The working group has decided to focus on indigenous issues in 2016, including the right to natural resources.

24. The national human rights institution of the United Republic of Tanzania has carried out the following activities:

(a) Awareness-raising among public and government officials on existence and recognition of indigenous peoples rights through sensitization programmes;

(b) Receiving and investigating allegations and complaints on violation of indigenous peoples' rights;

(c) Conducting enquiries and investigations on violation of human rights and contravention of principles of good governance related to indigenous peoples;

(d) Lobby and advocacy for the adoption and ratification of relevant international human rights instruments on indigenous peoples, such as the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169.

(b) Specific policies and programmes on indigenous peoples

25. The national human rights institution of Colombia has carried out specific programmes on indigenous peoples from two different perspectives: (a) prevention of the violation of, protection and defence of indigenous peoples' fundamental collective rights established in the Constitution and in ILO Convention No. 169; and (b) protection of indigenous peoples' rights in the framework of laws related to the recognition of their collective rights as victims, seeking damages resulting from the internal armed conflict.

26. The national human rights institution of Burundi has not developed policies and programmes on indigenous peoples. It plans to develop, in partnership with the associations of Batwa peoples and the relevant authorities, a pilot advocacy programme with the Government for the adoption and implementation of specific policies and programmes for the sustainable development of the Batwa peoples. The project will mainstream economic, social and cultural rights.

27. The Danish Institute for Human Rights has issued a strategy for its work concerning Greenland for 2015-2016. The strategy contains four aims:

(a) Close cooperation with the Human Rights Council of Greenland;

(b) Well-structured monitoring and reporting on the human rights situation in Greenland;

(c) Precise and applicable advice for authorities on human rights;

(d) Enhanced information and education for non-governmental parties on human rights.

28. The national human rights institution of the United Republic of Tanzania does not have specific policies and programmes on indigenous peoples, but there are other policies and programmes that consider the rights and affairs of indigenous peoples. The policies include the National Livestock Policy, 2006; Education and Training Policy, 1995; National Health Policy, 1990; National Environmental Policy, 1997; and National Land Policy, 1997. The programmes include: the National Strategy for Growth and Poverty Reduction, the United Nations programme on reducing emissions from deforestation and forest degradation (REDD-plus), and the draft Tanzania Social Action Fund (TASAF III) Indigenous Peoples Policy.

(c) Ad hoc capacity-building programmes on indigenous peoples' rights for staff, or planned capacity-building activities in this area

29. The national human rights institution of Burundi has not adopted a particular programme to develop capacities for its staff related to the rights of indigenous peoples. It plans to do so and takes this opportunity to request support from the Permanent Forum to develop this training.

30. The national human rights institution of Colombia is restructuring its office working on indigenous peoples in order to better comply with its legal mandate, including increasing its personnel, which will allow it to work with indigenous communities and to follow up actions on prevention of the violation of, protection and defence of indigenous peoples' rights.

31. The Danish Institute for Human Rights has no capacity-building programmes or courses for its staff specifically aimed at indigenous peoples' issues.

32. Several capacity-building programmes on indigenous peoples' rights for staff were conducted by the national human rights institution of the United Republic of Tanzania, including:

(a) Training and capacity-building of staff of the Commission on existence, recognition and implementation of indigenous peoples' rights in the United Republic of Tanzania (21-25 July 2015);

(b) Sensitization workshop on existence, recognition and implementation of the rights of indigenous peoples for the institution's staff and other stakeholders (29-30 September 2014);

(c) Sensitization seminar on existence and recognition of indigenous peoples and their rights for members of Parliament and national human rights institution staff (20 June 2015);

(d) Sensitization seminar on existence, recognition and implementation of indigenous peoples' rights for local government authorities officials and some national human rights institution staff (27-28 July 2015);

(e) Advanced short course on indigenous people's rights attended by three officers at the University of Pretoria, South Africa (15-19 September 2014).

(d) Conferences and other meetings organized or supported by your human rights institution on indigenous peoples' issues for 2016 and 2017

33. The national human rights institution of Burundi is currently developing a strategic plan that incorporates promotion, protection and defence of the rights of the Batwa peoples, including panel discussions and sensitization workshops on their living conditions.

34. The national human rights institution of Colombia supported an international seminar on consultation organized in December 2015 by the Ministry of the Interior and ACDI/VOCA. The aim of the seminar was to analyse the consultation process with indigenous peoples in Colombia and review some alternatives to having a legal instrument on this right.

35. The national human rights institution of the United Republic of Tanzania reported the following conferences and meetings on indigenous peoples' issues for 2016 and 2017:

(a) Sensitization seminars on indigenous peoples' rights for officials from government ministries, departments and agencies and representatives of civil society organizations;

(b) Consultative workshops on indigenous peoples' rights for members of Parliament and permanent secretaries of the key ministries;

(c) Stakeholders' meeting to launch and disseminate the report of the national human rights institution/Pastoralists Indigenous Non-Governmental Organizations Forum project on existence, recognition and implementation of indigenous peoples' rights.

36. The Danish Institute for Human Rights is not planning any conferences or meetings with indigenous peoples' issues as the main topic for 2016 and 2017. In preparation for the universal periodic review of Denmark in 2016, a public hearing organized by the Human Rights Council of Greenland and the Danish Institute for Human Rights was held in Nuuk, Greenland, in 2015 with a focus on the rule of law and access to justice.

37. More information is available from the following websites:

Argentina: www.dpn.gob.ar

Burundi: www.cnidh.bi

Colombia: www.defensoria.gov.co

Denmark: www.humanrights.dk

United Republic of Tanzania: www.chragg.go.tz